

RESOLUTION NO. 3017

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT FOR FROG POND PRIMARY SITE INFRASTRUCTURE BETWEEN THE CITY OF WILSONVILLE AND WEST LINN-WILSONVILLE SCHOOL DISTRICT.

WHEREAS, the City of Wilsonville (“City”), an Oregon municipal corporation, and the West Linn-Wilsonville School District (“District”), an Oregon school district, are authorized pursuant to ORS 190.003 et seq. to enter into intergovernmental agreements for the performance of any and all functions and activities that a party, or its officers or agencies, have authority to perform; and

WHEREAS, City and District are authorized pursuant to ORS 280.150 to “jointly, in such manner as they shall agree upon, construct, acquire, own, equip, operate and maintain facilities which will directly aid each participating governmental unit in performing a duty or duties imposed upon it or aid in exercising a power or powers conferred upon it, and may appropriate money and may issue bonds therefor”; and

WHEREAS, in the exercise of their respective duties and powers, the City and District have previously planned and conferred regarding the residential growth of the City, now and into the future, and the need to plan for, construct, and operate, among other things, school facilities, and infrastructure facilities to serve the planned school facility in coordination with such growth; and

WHEREAS, the development of this school site will require, as conditions for development approval, the construction of a public road system adjacent to the site, improvements to connecting roads serving the site, extension of water and sanitary sewer main lines, and provision of a storm drainage system; and

WHEREAS, to the extent the infrastructure that is required for the District to provide to develop and serve the site also involves extra capacity to serve subsequent development, then the District is entitled to reimbursement by such development; and

WHEREAS, the terms “costs of construction” or “infrastructure costs” for sewer and water and associated facilities used herein shall be intended to include both soft costs such as design, engineering, permitting, inspection, and management of construction, legal, bonding, and like costs and hard costs such as materials, labor, contingency, overhead, and like costs, except as may otherwise be set forth; and

WHEREAS, the District has conferred with the City and duly reviewed the aforementioned conditions recited above, and finds it has the authority to proceed in mutual aid of cooperatively advancing the development of education of its District's children through well-planned and funded schools and safe routes to schools and the necessity of having adequate and timely infrastructure facilities provided to serve schools and that such agreement can be prudently structured for funding appropriation to aid each participating government entity in carrying out its duties and powers to advance the public's interests.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

Section 1. The above recitals are incorporated by reference herein.

Section 2. A copy of the Intergovernmental Agreement for Frog Pond Primary School Site Infrastructure Between City of Wilsonville and West Linn-Wilsonville School District is marked as Exhibit 1 and attached hereto and incorporated by reference as if fully set forth herein. The City Manager is authorized to execute the Intergovernmental Agreement on behalf of the City, upon the City Attorney's approval as to form.

Section 3. Effective Date. This Resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 16th day of October 2023, and filed with the Wilsonville City Recorder this date.

DocuSigned by:
Julie Fitzgerald
8A974AF3ADE042E...

JULIE FITZGERALD, MAYOR

ATTEST:

DocuSigned by:
Kimberly Veliz
E781DE10276B498...

Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Yes
Councilor Linville	Yes
Councilor Berry	Yes
Councilor Dunwell	Yes

EXHIBIT:

- A. Intergovernmental Agreement for Frog Pond Primary School Site Infrastructure between City of Wilsonville and West Linn-Wilsonville School District

**INTERGOVERNMENTAL AGREEMENT
FOR FROG POND PRIMARY SCHOOL SITE INFRASTRUCTURE
BETWEEN CITY OF WILSONVILLE AND
WEST LINN-WILSONVILLE SCHOOL DISTRICT**

RECITALS:

A. WHEREAS, the City of Wilsonville (“City”), an Oregon municipal corporation, and the West Linn-Wilsonville School District (“District”), an Oregon school district, are authorized pursuant to ORS 190.003 et seq. to enter into intergovernmental agreements for the performance of any and all functions and activities that a party, or its officers or agencies, have authority to perform; and

B. WHEREAS, City and District are authorized pursuant to ORS 280.150 to “jointly, in such manner as they shall agree upon, construct, acquire, own, equip, operate and maintain facilities which will directly aid each participating governmental unit in performing a duty or duties imposed upon it or aid in exercising a power or powers conferred upon it, and may appropriate money and may issue bonds therefor;” and

C. WHEREAS, in the exercise of their respective duties and powers, the City and District have previously planned and conferred regarding the residential growth of the City, now and into the future, and the need to plan for, construct, and operate, among other things, school facilities, recreation field facilities, and infrastructure facilities to serve the planned school and recreation facilities in coordination with such growth; and

D. WHEREAS, in the exercise of its duties and powers, the City adopted the Frog Pond West Master Plan (“Master Plan”), which provides the strategy for residential development of the Frog Pond West neighborhood in Wilsonville and anticipates the District will construct a future primary school on property currently owned by the District in Frog Pond West (“School”); and

E. WHEREAS, the District plans to construct the School on the District’s property in Frog Pond West located at 7151 SW Boeckman Road, Wilsonville, Oregon (the “Property”) and has received approval from the City via Docket No. DB22-0012 to construct the School (the “Approval”); and

F. WHEREAS, the development of this School site requires, as conditions for development approval, improvements to connecting roads serving the site, extension of water and sanitary sewer main lines, and providing of storm drainage systems; and

G. WHEREAS, to the extent the infrastructure that is required for the District to provide to develop and serve the site also involves extra capacity to serve subsequent development, then the District is entitled to reimbursement by such benefitted development; and

H. WHEREAS, the terms “costs for construction” or “infrastructure costs” for streets and/or sewer, water, storm drainage, and associated facilities used herein shall be intended to include both soft costs such as design, engineering, permitting, inspection, and management of construction, legal, bonding, and like costs (as set forth in Section 3.2), and hard costs such as the material, labor, contingency, overhead, and like costs, except as may otherwise be set forth; and

I. WHEREAS, the City’s Infrastructure Funding Plan (“Funding Plan”), a component of the Master Plan, identifies four (4) off-site infrastructure projects: (1) Memorial Park pump station; (2) Boeckman Creek sanitary sewer trunk line; (3) west side water reservoir; and (4) Boeckman Bridge, which will be west of Frog Pond West over Boeckman Creek (“Boeckman Bridge”); and

J. WHEREAS, development within Frog Pond West is responsible for paying its proportionate share of the cost to construct the Boeckman Bridge, which transportation mitigation fee is referred to in the Funding Plan as the “Boeckman Bridge Fee,” which the District is responsible for paying the Boeckman Bridge Fee and has already paid to the City the Boeckman Bridge Fee; and

K. WHEREAS, the Funding Plan also lists three (3) Master Plan infrastructure projects that are the responsibility of development within Frog Pond West and that are the focus of the Funding Plan: (1) the north side of SW Boeckman Road adjacent to Frog Pond West, including sanitary sewer (“Boeckman Road”); (2) the west side of SW Stafford Road adjacent to Frog Pond West, including sanitary sewer and water (“Stafford Road”); and (3) the Neighborhood Park within Frog Pond West (“Neighborhood Park”), which collectively are referred to in the Funding Plan and in this Agreement as the “Unfunded Projects;” and

L. Due to the size and expense of these three (3) Unfunded Projects and the multiple property ownerships within Frog Pond West, the City will take responsibility for constructing the Unfunded Projects, and the District is responsible for paying an infrastructure supplemental fee in exchange for the City taking responsibility for constructing the Unfunded Projects (“Infrastructure Supplemental Fee”), and the District has already paid to the City the Infrastructure Supplemental Fee.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the undersigned parties jointly and respectively agree as follows:

1. Recitals. The recitals above are included herein as findings in support of the respective parties' authority pursuant to ORS 190.003 et seq. and ORS 280.150.

2. Frog Pond West Primary School Site.

2.1. Site Location and Description. The proposed site is approximately 12.6 acres, is of sufficient size to accommodate a future primary school building, parking, bus service, playgrounds, and associated facilities, with an approximate 2.93-acre portion to be sold to the City for a future neighborhood park. The site is located adjacent to City residential areas and is located within the Master Plan area, and the site is more particularly described in **Exhibit A**, attached hereto and incorporated by reference herein.

2.2. District Improvements. The District intends to construct the School and related amenities on the Property within Frog Pond West. The School has received City Approval, and the District is currently refining construction plans to be submitted in the permitting processes required by the City for development. The District agrees to construct any and all public improvements required of the District, as stated in the City Approval ("Public Improvements").

2.3. Payment of Fees. The District will pay all fees required by the City for such development, including the Infrastructure Supplemental Fee and the Boeckman Bridge Fee described herein (collectively referred to as "Frog Pond West Fees"), in order to obtain the appropriate permits to move forward with construction of the School, to the extent not already paid to the City.

2.4. Compliance with Master Plan and City Code. The District agrees to adhere to the purpose, terms, conditions, guidance, regulations, and requirements contained in the Frog Pond West Master Plan and related Wilsonville Code. The District is further obligated to act in good faith and pursuant to the City of Wilsonville Public Works Standards in providing access to infrastructure for other development within Frog Pond West. The District will not prohibit, block, or otherwise impede another developer's ability to access and tie into infrastructure within Frog Pond West. If the City determines, in its sole and absolute discretion, that the District is engaging in conduct or behavior to prevent, inhibit, or

otherwise deter other development from accessing or tying into infrastructure within Frog Pond West, the City may withhold occupancy permits, building permits that are in process, and future building permits unless and until the District allows other development to access the infrastructure within Frog Pond West.

3. Formation of Reimbursement District. The parties agree that the District may form a reimbursement district pursuant to W.C. 3.116 for the construction of stormwater and sewer infrastructure and related improvements in and/or along SW Brisband Street. Pursuant to WC 3.116 (6), an application for a reimbursement district may be submitted within 90 days of the applicable public infrastructure being completed by the District and accepted by the City. A reimbursement district has a ten (10) year term, but may be extended by the City upon good cause shown. Upon an application being submitted, the City Engineer will prepare and recommend to the City Council the refund methodology that fairly apportions the refund among the properties adjacent to or served by the improvement, which shall be paid upon such property making use of such infrastructure. Provided, however, that under current law no lien attaches to such property by the formation of the reimbursement district and adoption of the refund methodology.

4. Dispute Resolution.

4.1. Mediation. All disputes arising out of this Agreement shall first be submitted to mediation. Any Party desiring mediation shall provide the other Party with a written notice (the "Request to Mediate"), which shall set forth the nature of the dispute. The Parties shall, in good faith, cooperate in the selection of a mediator and may adopt any procedural format that seems appropriate for the particular dispute. In the event a written settlement agreement is not executed by the Parties, in the Parties' sole discretion, within twenty (20) days from the date of the Request to Mediate, or such longer time frame as may be agreed upon in writing by the Parties, any Party may make demand for arbitration pursuant to the following paragraph.

4.2. Arbitration or Litigation. Any dispute of this Agreement which is not resolved through mediation, upon mutual agreement of the Parties may be submitted to arbitration, to be conducted in Wilsonville, Oregon before a single arbitrator selected by mutual agreement of the Parties. The arbitrator shall have substantial experience in commercial real estate and construction disputes. If the

Parties are unable to mutually agree upon and select an arbitrator within twenty (20) days, then any Party may file an action in Clackamas County Circuit Court in lieu of arbitration and there will be no obligation to arbitrate unless otherwise required by Oregon law. If arbitrated, judgment upon the arbitrator's award may be entered in any court having jurisdiction of the matter.

4.3. Equitable Remedies. Even if the parties undergo mediation or arbitration, the City may still request immediate equitable remedies of either specific performance or injunctive relief to occur while mediation or arbitration is pending or ongoing. The parties will otherwise agree to abate the court case pending completion of the mediation or arbitration.

5. Recording. This Agreement runs with the District's land that is subject to this Agreement, as identified in **Exhibit A**. Either this Agreement or a memorandum of this Agreement will be recorded by the City with the Clackamas County Recorder's Office for all real property subject to this Agreement.

6. Miscellaneous.

6.1. Further Assurances. Each party shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder, in good faith, to carry out the intent of the parties hereto.

6.2. Modification or Amendment. No amendment, change, or modification of this Agreement shall be valid, unless in writing and signed by the parties hereto.

6.3. Burden and Benefit; Assignment. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties and their successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.4. No Continuing Waiver. The waiver by either party of any breach of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach.

6.5. Applicable Law. This Agreement shall be interpreted under the laws of the State of Oregon.

6.6. Time of Essence. Time is expressly declared to be the essence of this Agreement.

6.7. Notices. All notices, demands, consents, approvals, and other communications which are required or desired to be given by either party to the other hereunder shall be in writing and shall be faxed, scanned to PDF format and emailed, hand delivered, or sent by overnight courier or United States Mail at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three days after mailing by United States Mail, or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal.

To City: City of Wilsonville
Attn: Amy Pepper, Development Engineering Manager
City of Wilsonville
29799 SW Town Center Loop E.
Wilsonville OR 97070

To District: West Linn-Wilsonville School District
Attn: _____
22210 SW Stafford Rd.
Tualatin OR 97062

6.8. Rights Cumulative. All rights, remedies, powers, and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law.

6.9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

6.10. No Third Party Beneficiaries. None of the duties and obligations of any party under this Agreement shall in any way or in any manner be deemed to create any rights in any person or entity other than the parties hereto.

6.11. Legal Review. All of the Parties to this Agreement hereby affirm that they have been represented in the negotiation hereof by their own independent legal counsel, who have reviewed this Agreement and advised their respective client concerning the same. Therefore, it shall be interpreted accordingly and shall not be construed against the drafter.

6.12. Representations and Warranties. Each Party signing on behalf of the District and the City hereby warrants actual authority to bind their respective Party. The Parties signing below also hereby warrant that entry into this Agreement and the enforcement of its terms will not violate any loan covenants or other agreements pertaining to any of the land or improvements impacted hereby.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of this _____ day of _____, 2023.

WEST LINN WILSONVILLE
SCHOOL DISTRICT

CITY OF WILSONVILLE

By: _____
Print Name: _____
Its: _____

By: _____
Bryan Cosgrove
Its: City Manager

Approved as to form:

Approved as to form:

Print Name: _____, OSB # _____
District's Attorney

Amanda Guile-Hinman, OSB #093706
City Attorney